

DEPARTMENT OF HEALTH SERVICES



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July 14, 1995

TO: All County Welfare Directors
All County Administrative Officers
All County Hearings Officers

Letter No.: 95-43

THE ROLE OF THE AUTHORIZED REPRESENTATIVE IN THE HEARING PROCESS

Ref.: All County Welfare Directors Letter (ACWDL) Nos. 93-84, 94-42, 94-62, 94-70, 94-99 and 95-30, Department of Social Services All County Letter (ACL) No. 94-63

The information in this letter is concerned only with the hearing process and does not apply to the Medi-Cal eligibility process. The purpose of this ACWDL is to clarify the role of the Authorized Representative (AR) in Medi-Cal appeals. Information contained in this ACWDL is the result of a meeting with Administrative Law Judges (ALJs) and Medi-Cal Eligibility Branch (MEB) staff in May, 1995. To date, all ACWDLs regarding the AR function have dealt primarily with application and eligibility determination issues.

It should be noted that the MC 306 (Appointment of Representative) form is not to be used to authorize an AR for state hearings or appeals. The form does indicate that the AR has the authorization to accompany and assist the applicant/beneficiary in the hearing process. However, that acknowledgement is only a statement of the claimant's right to have an AR participate in the hearing process. Specifically, the MC 306 will be valid for the AR to continue to act on the behalf of the applicant/recipient for the determination of Medi-Cal eligibility through any hearings/appeals process period. The Administrative Adjudications Division has its own required AR form (PA 19, Authorized Representative, sample attached) and respective regulations. DHS policy does not dictate hearings policy.

I. WHO MAY BE AN AR FOR HEARINGS

Title 42, Code of Federal Regulations, Section 431.206(b) states that every applicant or recipient must be informed of:

- (1) The right to a hearing;
- (2) The method by which he may obtain a hearing; and
- (3) The option to represent himself or use legal counsel, a relative, a friend, or other spokesman.

There are various procedures in place whereby an individual requesting a hearing designates someone to represent him/her in the hearing process. The **Manual of Policies and Procedures** (MPP, section 22-085.2*) requires that the claimant must provide a written statement to authorize a representative to represent him/her, unless:

1. The claimant appears at the hearing and verbally requests that the representative be permitted to be recognized as the AR;

* Effective May 12, 1995 Section 22-010 which is concerned with authorized representatives, has been renumbered 22-085

2. If the claimant is not present at the hearing and has not submitted a written authorization for the representative to be designated as the AR, the following will occur:
 - A) If the representative swears or affirms at the hearing that the claimant has authorized him/her to act on the claimants behalf, and the Administrative Law Judge (ALJ) further determines that the person is so authorized, he/she will be recognized as the AR.
 - B) If the representative is an attorney, he/she will be recognized as the AR. Attorneys are not required to have a AR form signed designating them as the AR.

So that the ALJ may determine the individual's authorization, collateral contact with the claimant may be made. (MPP, Section 22-085.2)

Even though the ALJ may acknowledge an individual as the AR initially, written authorization from the claimant must be submitted within five days from the hearing, unless extended by the ALJ. If written confirmation from the claimant is not submitted in the five-day or extended period, the case shall be considered abandoned and dismissed by the ALJ by written decision.

II. REPRESENTATION FOR INCOMPETENT/DECEASED PERSONS

At the hearing the representative may not be able to swear or affirm that he/she has the authorization from the claimant to represent him/her due to the claimant's condition (incompetency, comatose, or similar condition). Should this occur the ALJ may allow the hearing to proceed if the representative is the following:

- A relative, or person who has knowledge of the applicant/beneficiaries circumstances and who has completed and signed the MC 210 Statement of Facts. (MPP, Section 22-085.23)

The representative is no longer required to sign a statement under penalty of perjury that he/she is acting in the best interest of the claimant.

NOTE: For an individual who dies after a request for a hearing has been filed with the State, but before the hearing has been held, only the representative of the claimant's estate will be allowed to continue in the proceedings.

MPP, Section 22-004.41, defines the representative of the estate as:

...the executor/executrix or administrator/administratrix of the estate.
If there is no estate to be probated, the representative may be a relative (e.g., parents, spouse, children, siblings, grandparents or grandchildren of the deceased claimant).

If the respective claimant dies before filing a hearing request, only those individuals specified above may file a request on behalf of the prospective claimant's estate (MPP, Section 22-004.5).

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III. REQUIRED AUTHORIZATIONS

Effective May 12, 1995 any claimant wishing to authorize a representative to represent him/her during all aspects of the hearing process must sign and date an AR form which designates a person to represent him/her. The form must be signed and dated on or after the date of action or inaction with which the claimant is dissatisfied (MPP Section 22-085.1). The following changes are also effective May 12, 1995:

1. If the claimant is not present at the hearing, the AR form must be signed and dated by the claimant on or after the date of the action or inaction which is being appealed.
2. There is a rebuttable presumption that the authorization is valid.
3. If the claimant is not present at the hearing and the written authorization does not meet the requirements of #1 above, the ALJ may proceed if circumstances indicate that the claimant wishes to proceed with the hearing process.

The authorization will expire one year from the date that the authorization is presented to the ALJ or county, unless revoked or limited to a shorter period of time by the claimant. This expiration period will be extended to the final disposition of the hearing in cases of pending appeals or State hearings (MPP, Section 19-005.21).

Previously issued ACWDLs are only concerned with the consistent application of Medi-Cal policy for the determination of Medi-Cal eligibility. The letters have no affect on hearings policies or regulations.

The new NA Back 7, printed on most notices of action, contains a provision to designate an AR for hearings/appeals. A copy of the NA Back 7 is enclosed.

IV. QUESTIONS AND ANSWERS

The following questions and answers have been provided by the Administrative Adjudications Division:

Question 1: Who is an "applicant" for aid?

Answer: An "applicant" for aid is the person on whose behalf aid is requested. Thus an individual who files a Medi-Cal application on behalf of a disabled person is not the "applicant". {For purposes of MPP Section 22-001c(2)}

Question 2: Who is a "claimant"?

Answer: In Medi-Cal cases, the claimant is the person who has requested a state hearing and is, or has been:

1. An applicant for or recipient of aid;
2. A representative of the estate of a deceased applicant or recipient;
3. The caretaker relative of a child;

4. The guardian or conservator of an applicant or recipient; and
5. The sponsor of an alien.

Question 3: If the applicant for or recipient of aid is deceased, who can be the claimant?

Answer: If there is an estate, only the legal representative of the estate (i.e., executor/executrix or administrator/administratrix) can be the claimant. If there is no estate to be probated, the claimant **may** be a relative of the decedent. Relatives includes parents, spouse, children, siblings, grandparents or grandchildren.

Question 4: Who cannot be recognized as a claimant?

Answer: The following persons are not claimants:

1. Parents or relatives of living applicants/recipients unless the applicant or recipient is a child.
2. Representatives of nursing homes or hospitals seeking aid on behalf of an applicant or recipient.
3. Persons who have filed applications for Medi-Cal on behalf of an individual **who is physically or mentally incapacitated unless the person is a guardian or conservator.**

Question 5: Can any of the people identified above be an AR for hearings purposes?

Answer: Yes, any of the above persons may be an AR if properly authorized to so act by a competent applicant or recipient.

Question 6: What if the applicant or recipient is incompetent?

Answer: If the applicant or recipient is incompetent, comatose or suffering from amnesia, the following persons can be recognized as an AR for purposes of a hearing:

1. A relative of the applicant or recipient;
2. An individual who has knowledge of the persons circumstances and has completed and signed the MC 210 Statement of Facts on the claimant's behalf; or
3. An attorney.

It should be noted that if there is no spouse, conservator, guardian or executor, the CWD must determine if protective services are necessary. If protective services are indicated then the county or public guardian will complete and sign the MC 210 and will be the claimant, not the AR, for hearings.

Question 7: Can a person other than an attorney represent a person if the authorization was signed at the time of the Medi-Cal application?

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Answer: For all hearings filed on or after May 12, 1995, the claimant must have signed and **dated the AR form on or after** the action or inaction with which the claimant is dissatisfied. Thus, an **AR form** signed at the time of Medi-Cal application would not be a valid AR form.

Question 8: Can an attorney be an AR for a deceased person?

Answer: Yes, but only if he/she has been authorized to so act by the legal representative of the decedent's estate or, if there is no estate, by a relative.

Question 9: What is a "special administrator"?

Answer: In some instances an individual or an organization may be declared a "special administrator" by the Superior Court. This declaration allows the special administrator to act on the **behalf of the** decedent in a state hearing. The special administrator would be the claimant and the **special** administrator may chose who will be designated as the AR.

If you have any further questions or comments concerning this issue, please direct them to Gary Varner of my staff at (916) 654-5321.

Sincerely,

ORIGINAL SIGNED BY
GLENDA ARELLANO for
Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosure

AUTHORIZED REPRESENTATIVE

_____, 19____

State of California
Department of Social Services
144 P Street, M.S. 19-37
Sacramento, California 95814

_____, _____ of
(Name)

_____, _____
(Address) (City and Zip)

California, have requested _____
(Name)

_____, _____
(Address) (City and Zip)

to act on my behalf in my appeal regarding my application for and/or receipt of _____

_____, _____
(Aid)

I hereby authorize your department to release any or all information pertaining thereto to

_____, _____
(Name)

Signed _____

IF YOU STILL WANT YOUR HEARING, it is required that you attend the hearing or have someone appear on your behalf. If no such appearance is made at the time scheduled, the entire matter will be dismissed. Even though you want someone to represent you, your appearance at the hearing would be helpful to the Administrative Law Judge in making an appropriate decision. If you have authorized someone to act as your representative, that authorization must be in writing, and available to the Administrative Law Judge at the hearing. This Authorized Representative form is enclosed for this purpose. Please complete this form and bring it to your hearing. You should notify that person of the time and place of your hearing. You may bring witnesses or other persons who you believe can help you **explain your position**. You should also bring any documents or other papers that you think pertinent and that you wish to have considered.

STATE HEARINGS ALL TESTIMONY IS TAKEN UNDER OATH. FALSE STATEMENTS MADE BY ANY WITNESS WILL SUBJECT THAT WITNESS TO POTENTIAL PROSECUTION FOR PERJURY.

Information regarding your request has been sent to your county welfare department. Staff from that **agency may be** contacting you about the agency's decision, the reason for its action, and the reasons for your request in an effort to resolve the problem.

If you have been receiving assistance, your aid payment will continue in the same amount unless your request was not filed before the effective date of the proposed action.

You will be notified by the Chief Administrative Law Judge if your assistance is going to be changed while **your case is** being considered.

If you are not now receiving aid payments, you will not receive aid pending your state hearing.

HEARING RIGHTS

Ask For a State Hearing

You only have 90 days to ask for a hearing. The 90 days started the day after we gave or mailed you this notice.

You have a much shorter time to ask for a hearing if you want to keep your same benefits.

Keep Your Same Benefits While You Wait For a Hearing

You must ask for a hearing before the action takes place.

- Your Cash Aid will stay the same until your hearing.
- Your Medi-Cal will stay the same until your hearing.
- Your Food Stamps will stay the same until the hearing or the end of your certification period, whichever is earlier.
- Your Transitional Child Care (TCC) will stay the same until the hearing or the end of your eligibility period, whichever is earlier. **For all other child care programs, your benefits will NOT stay the same until your hearing.**
- If the hearing decision says we are right, you will owe us for any extra cash aid or food stamps you got.

To Have Your Benefits Cut Now

If you want your Cash Aid or Food Stamps cut while you wait for a hearing, check one or both boxes.

☐ Cash Aid ☐ Food Stamps

To Get Help

You can ask about your hearing rights or free legal aid at the state information number.

Call toll free: 1-800-952-5253

If you are deaf and use TDD, call: 1-800-952-8349

You may get free legal help at your local legal aid office or welfare rights group.

Other Information

Child and/or Medical Support: The District Attorney's office will help you collect support even if you are not on cash aid. There is no cost for this help. If they now collect support for you, they will keep doing so unless you tell them in writing to stop. They will send you any current support money collected. They will keep past due money collected that is owed to the county.

Family Planning: Your welfare office will give you information when you ask for it.

Hearing File: If you ask for a hearing, the State Hearing Office will set up a file. You have the right to see this file. The State may give your file to the Welfare Department, the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. (W. & I Code Section 1750)

HOW TO ASK FOR A STATE HEARING

The best way to ask for a hearing is to fill out this page. Make a copy of the front and back for your records. Then, send or take this page to:

Your worker will get you a copy of this page if you ask. Another way to ask for a hearing is to call 1-800-952-5253. If you are deaf and use TDD, call: 1-800-952-8349.

HEARING REQUEST

I want a hearing because of an action by the Welfare Department of _____ County about my

☐ Cash Aid ☐ Food Stamps ☐ Medi-Cal ☐ Child Care
☐ Other (list) _____

Here's why: _____

☐ Check here and add a page if you need more space.

☐ I want the person named below to represent me at this hearing. I give my permission for this person to see my records or come to the hearing for me.

NAME _____

ADDRESS _____

☐ I need a free interpreter.

My language or dialect is: _____

My name: _____

Address: _____

Phone: _____

My case number: _____

My signature: _____

Date: _____